

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

FILED
U.S. DISTRICT COURT
DISTRICT OF NEBRASKA

14 MAY 27 PM 3:29

Randall S. Krause,)
Plaintiff,)
vs.)
City of Omaha,)
Defendant.)

Case No. 8:14cv94

OFFICE OF THE CLERK

**RESPONSE TO DEFENDANT'S
MOTION TO DISMISS**

RESPONSE TO DEFENDANT'S MOTION TO DISMISS

- 1) The controversy in this case is whether the sand, rock salt, calcium chloride, magnesium chloride, and beet extract ("the materials") that the Defendant applies to streets in the City of Omaha for snow and ice control during the winter season become "solid waste" under 42 U.S.C. §6903 (27) after they have served their intended purpose. The Plaintiff asserts that the materials become solid waste after they have served their intended purpose. The Defendant does not acknowledge that the materials become solid waste under the laws of the United States.
- 2) If the materials become solid waste as stated above, then the Defendant becomes subject to the Resource Conservation and Recovery Act (RCRA) as the generator of the solid waste. The Defendant does not want to be subject to the RCRA under these circumstances because of the perceived costs involved. The Plaintiff wants the Defendant to be subject to the RCRA for the protection of the environment. If the Defendant is subject to the RCRA, then the legal relation of the Plaintiff and Defendant becomes *Citizen-RCRA Subject*.
- 3) If the Court declares that the materials become solid waste as stated above, then the controversy in this case will be resolved and the Defendant will be subject to the RCRA for the protection of the environment.
- 4) The Plaintiff brings this claim for relief under the Declaratory Judgment Act to resolve the controversy before the need for a citizen suit under 42 U.S.C. §6972.

WHEREFORE, the Plaintiff prays that the Defendant's Motion to Dismiss will be denied.

5/27/14
Date Executed

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CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing RESPONSE TO DEFENDANT'S MOTION TO DISMISS has been sent by the undersigned, via U.S. Mail, postage prepaid, on this 27th day of May, 2014 to:

Alan M. Thelen
Deputy City Attorney
1819 Farnam St. Suite 804
Omaha, NE 68183


Randall S. Krause